

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:HOU:2: [REDACTED]  
NGraml

date: June 29, 2001

to: Territory Manager 1760, LMSB  
Attn: [REDACTED] Team Coordinator, LMSB, Stop 4304 HAL

from: Area Counsel (Natural Resources:Houston)

subject: [REDACTED]

Form 1120, [REDACTED]

TIN: [REDACTED]

SOL: [REDACTED]

Your requested our advice regarding the following:

**ISSUES**

1. If the parties execute a Form 872-A (with an open statute date) and the Service subsequently receives a Form 872-T before the taxpayer's original statute date for assessment, whether the Form 872-T can shorten the original statute date.

2. If so, whether the Service is required to accept a taxpayer-offered Form 872-A when the taxpayer refused to sign a Service-offered Form 872 which would have extended the statute date beyond the original date.

3. If not, because the Form 872-A designates the District Director as the Service's agent to receive a Form 872-T, whether the Service can send a cover letter with, and add a paragraph to, the taxpayer-offered Form 872-A to add the correct name and address for delivery of a subsequent Form 872-T.

**CONCLUSIONS**

1. A Form 872-T cannot shorten the [REDACTED] original statute date. If the Service receives the Form 872-T before the original statute date, it may assess the tax by either the original statute date or 90 days after it receives the Form 872-T, whichever date is later.

2. This issue is moot because of our conclusion to the

first issue.

3. The Service should add the following paragraph to the taxpayer-offered Form 872-A:

(5) This agreement may be terminated by either the taxpayer or the Internal Revenue Service with the use of Form 872-T, which form is available from the division operating unit of the Internal Revenue Service considering the taxpayer's case. For a termination initiated by the taxpayer to be valid, the executed Form 872-T must be delivered to one of the following addresses or another address designated by the division operating unit considering the taxpayer's case, which address will supersede the address provided below:

If **MAILING** Form 872-T, send to:

Director of Field Operations  
Internal Revenue Service  
Attention: Territory Manager 1760 and  
Team Manager 1764  
8701 S. Gessner  
Stop 4304 HAL  
Houston, Texas 77074

If **HAND CARRYING** Form 872-T, deliver to:

Team Coordinator [REDACTED]  
Internal Revenue Service  
8701 S. Gessner  
Stop 4304 HAL  
Houston, Texas 77074

An explanatory cover letter is optional.

#### **FACTS**

The taxpayer's [REDACTED] fiscal year ended March 31, [REDACTED] ([REDACTED]), with Form 1120 originally due to be filed on [REDACTED]. The Service granted the taxpayer an extension to [REDACTED] to file its [REDACTED] return, and the taxpayer filed its return on this date. To date, the statute to assess the taxpayer for [REDACTED]

expires [REDACTED].

The Service offered the taxpayer a Form 872 which provided to extend the statute to [REDACTED]. The taxpayer counter-offered a Form 872-A, "Special Consent to Extend the Time to Assess Tax," in which it proposed (among other things irrelevant here) to extend the [REDACTED] assessment date to ". . . on or before the 90<sup>th</sup> (ninetieth) day after . . ." the Service receives from the taxpayer a Form 872-T, "Notice of Termination of Special Consent to Extend the Time to Assess Tax." The taxpayer did not create the quoted language; it is part of the "pro forma" Form 872-A. In essence, the taxpayer-offered Form 872-A does not specify a statute date. If the Service accepts it, a subsequent Form 872-T will terminate the statute date in accordance with the terms in the Form 872-A.

The Service had revised its "pro forma" Forms 872-A and 872-T in 1987 and 1983,<sup>1</sup> respectively, before the recent reorganization. Consequently, the forms provide erroneous instructions for the Service's signature authority (District Director) and the Form 872-T erroneously directs the taxpayer to mail it to the District Director having return jurisdiction with attention to Chief, Examination Division.

If the Service decides to execute a Form 872-A, it will revise the taxpayer-offered Form 872-A to substitute the "Director of Field Operations" (DFO) for the "District Director" in the signature block. The Service states that the Team Manager has the delegated authority to sign the Form 872-A for the DFO. The Service wishes to send a cover letter with the executed Form 872-A which states that the taxpayer should either hand deliver a subsequent Form 872-T to Team Coordinator [REDACTED] or mail the Form 872-T to the DFO having jurisdiction over the return, to the attention of "Territory Manager 1760 and Team Manager 1764, 8701 S. Gessner, Stop 4304 HAL, Houston, Texas 77074." The Service also wishes to add this language to the Form 872-A.

#### DISCUSSION

Section 6501(a) provides the general rule that the Service

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<sup>1</sup> The Service states that there is "an electronic version dated October 1990" which I do not have. I am attaching the 1987 and 1983 versions for Forms 872-A and 872-T, respectively, which Exam provided as its latest hard copies.

must assess a deficiency in income tax within three years after the taxpayer files its return. Section 6501(c)(4) sets forth an exception to this general rule and allows the Service and the taxpayer, before the expiration of the time prescribed for assessment, to consent in writing to extend the period for assessment. I.R.C. § 6501(a) and (c)(4). The parties are free to decide the terms to an extension. The Tax Court has repeatedly approved agreements to extend the statute of limitations on assessment for an indefinite time, which either party may terminate upon proper notification. See Grunwald v. Commissioner, 86 T.C. 85, 88-89 (1986).

Rev. Proc. 79-22, 1979-1 C.B. 563, sets out the Service's procedures for entering into indefinite extension agreements, Forms 872-A. Form 872-A expressly states that a taxpayer may terminate the agreement 90 days after the Service's office considering the case receives the taxpayer's Form 872-T. Further, section 3.02 in Rev. Proc. 79-22 states that "Form 872-A will in no event operate to reduce the time for assessment otherwise provided by law."

Here, the law otherwise provides that the statute for assessment will expire [REDACTED]. If, hypothetically, the parties execute a Form 872-A on [REDACTED] and the Service properly receives a Form 872-T on [REDACTED], the period for assessment expires on the original date, [REDACTED], not [REDACTED]. Form 872-T cannot reduce this time. If the Service receives the Form 872-T on [REDACTED], the period for assessment expires [REDACTED], 90 days after the day of receipt, as expressly stated in the Form 872-A. Similarly, a Form 872-A received on [REDACTED] terminates that statute date on [REDACTED].

Finally, because the Form 872-A is an agreement between the parties, the parties can also agree to the location where the Service must receive the taxpayer's Form 872-T.

Please call me at 281-721-7358 if I can be of further assistance.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-

client privilege. If disclosure becomes necessary,  
please contact this office for our views.

BERNARD B. NELSON  
Area Counsel  
(Natural Resources:Houston)

By: \_\_\_\_\_  
NANCY GRAML  
Senior Attorney (LMSB)

Attachments: as stated

Copies to: Carol B. McClure, S.L.A. (LMSB)  
Robert E. Roesing, Team Leader, Stop 4304 HAL